PUBLIC PROSECUTOR v. OOI SENG HUAT

[A.Cr.J. (Chang Min Tat J.) August 15, 1968]
[Ipoh — Criminal Appeal No. 29 of 1968]

Road Traffic — Charge of using vehicle as pirate taxi — Whether observation of user must be continuous — Presumption under s.144, Evidence Ordinance, 1950.

Evidence Road Traffic — Presumptions

The public prosecutor appealed against the acquittal of the respondent at the close of the case for the prosecution on a charge of using a vehicle as a private taxi and using it without the necessary license and insurance policy. The learned magistrate in his grounds of judgment stated that the observation of the use of the car for 28 days before the arrest was not continuous and by reason of this lack of continuity in the groundwork observation by the police the presumption under section 144 of the Evidence Ordinance did not arise and since there was no direct evidence of payment or offer of payment from the passengers then in the car, he held that the prosecution had not made out a *prima facie* case against the respondent.

Held: in view of the innumerable permutations in the user of the car, the observation need not be continuous to raise the presumptions under section 144 of the Evidence Ordinance. There is nothing is section 144 which refers to groundwork observation.

Cases referred to:—

(1) *Darus* v. *Public Prosecutor* [1964] M.L.J. 146 at p. 148.

(2) *John* v. *Humpreys* [1955] 1 All E.R. 793 at 794.

CRIMINAL APPEAL.

M. Mahalingam (Deputy Public Prosecutor) for the appellant.

A. Mahendran for the respondent.

Chang Min Tat J. (delivering oral judgment): This is an appeal by the deputy public prosecutor against the acquittal of the respondent at the close of the case for the prosecution on a charge of using a vehicle as a pirate taxi and using it without the necessary licence and insurance policy.

In his grounds of judgment the learned magistrate expressed himself to be very concerned that the observation of the use of this car for a period of about 28 days before the arrest was not continuous and he ruled that by reason of this lack of continuity in the groundwork observation by the police the presumption under section 144 of the Road Traffic Ordinance did not arise and since there was no direct evidence of payment or offer of payment from the passengers then in the car he held that the prosecution had made out no *prima facie* case against the respondent calling for his rebuttal.

It is conceded by both the deputy public prosecutor and learned counsel for the respondent that there would appear to be no judicial decision that such groundwork observation should be continuous. Counsel for the respondent however argued, with great persuasion, that if in effect a car was used as a pirate taxi for earning the livelihood of the operator or the owner then the only reasonable inference from such use would be a continuous user and therefore arguing from this premise he submits that unless there was a continuous operation the presumption would be that the user was not as a pirate taxi. This argument is, as I said, very attractive but however attractive it is I am unable to find that it is sound in law. It may be that the user of any car on the days that it was not observed by the police was away from the sight of the police officers. In view of the innumerable permutations in the user of any car, I am unable to agree that the observation must be continuous to raise the presumptions under section 144 of the Road Traffic Ordinance. Now as a matter of law a presumption is a statutory invention that upon the proof of a fact an inference of another fact can be drawn. In the circumstances of a pirate taxi charge, the presumptions under section 144(a) and (b) are that any conveyance of persons in a motor vehicle was for hire or reward and that the passengers were carried in consideration of separate payments made by them. There is nothing in section 144 which refers to groundwork observation. There is as I see it no strict legal necessity for the groundwork observation except perhaps as stated by Ong Hock Thye J. (as he then was) that such observation was evidence permitted under section 15 of the Evidence Ordinance to prove and here I quote "that the meetings were not accidental and that it was the appellant's regular practice to pick up passengers".(1) It seems to me too that while this groundwork observation is strictly not necessary and only anticipatory of any defence, it goes a long way to mitigating the harshness of the law if applied strictly by the police stopping any and every car in which passengers are being carried and relying on the presumption hailing the driver to the court. What Lord Goddard C.J. in *John* v. *Humphreys*,(2) (at page 794) has said in connection with the licensing of the car or of the driver —

> "In theory, I suppose, a police officer who sees a car being driven in the street can always summon the driver of the car and leave it to the driver of the car to prove that he had a licence. It is not to be contemplated for a moment, however, that police officers would act in such a way; if they did, not only would they have costs given against them, but I should think that very severe steps would be taken."

can be adapted to apply to a pirate taxi case brought without groundwork observation, and so adapted, there is no better answer to the submission of counsel for the respondent that it would be unfair to raise the presumptions without continuous groundwork observation.

In my view therefore I hold that there is no justification for the view that observation must

be continuous and I therefore set aside the order of the magistrate and remit the case to the magistrate for him to call on the defence.

Order accordingly.

PUBLIC PROSECUTOR v. LIM SWEE GUAN

[A.Cr.J. (Ong Hock Sim J.) August 16, 1968]
[Penang — Criminal Revision No. 5 of 1968]

Penal Code, s. 408 — Criminal breach of trust — Charge bad in law — Order of retrial — Criminal Procedure Code (Cap. 21), s. 163(2).

The accused was charged with criminal breach of trust an offence under section 408 of the Penal Code and convicted on his plea and sentenced to one year's imprisonment. It was later realised that the charge contravened section 163(2) of the Criminal Procedure Code because the time included between the first and last dates mentioned in the charge exceeded one year and therefore was bad in law. On revision,

Held: the accused should be retried before the same or another magistrate. This was not a proper case to follow *Cheah Yew Fatt* v. *Public Prosecutor* (1) and merely quash the conviction and leave it to the Public Prosecutor to act thereafter in his discretion having regard to sections 322 and 310 of the Criminal Procedure Code.

Cases referred to:—

(1) *Cheah Yew Fatt* v. *Public Prosecutor* [1960] M.L.J. xlvi.

(2) *Ahmad Shah bin Yasin* v. *Public Prosecutor* [1952] M.L.J. 28.

(3) *R.* v. *Tan Chu Chooi* [1938] M.L.J. 230.

CRIMINAL REVISION.

Abdul Razak bin Dato' Abu Samah (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Ong Hock Sim J.: This matter has come to me to be dealt with by way of revision. In this case, the accused had pleaded guilty to the following charge:—

"That you, between 9th March, 1965 and 20th November, 1967, at the United Malayan Banking Corporation Limited, Beach Street, Penang, in the District of Georgetown, in the State of Penang, being a servant in the employment of the said United Malayan Banking Corporation Limited, and in such manner entrusted with certain property, to wit, $165,000 cash, committed criminal breach of trust in respect of that property and thereby committed an offence punishable under section 408 of the Penal Code."

He was convicted on his own plea and sentenced to one year's imprisonment.

I need only refer to section 163(2) of the Criminal Procedure Code (S.S. Cap. 21) which reads:—

"When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 174; provided that the time included between the first and last of such dates shall not exceed one year."

It is clear that in the present instance, the charge is wrong and directly contravened an express statutory provision. This vitiated the trial which in effect is a nullity. In exercise of its revisionary powers under section 322 Criminal Procedure Code the court may exercise the powers under section 310 and, as in an appeal from a conviction, reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court of competent jurisdiction or committed for trial. I do not think it proper for me in this case to follow *Cheah Yew Fatt* v. *Public Prosecutor* (1) and merely quash the conviction and leave it to the public prosecutor to act thereafter in his discretion having regard to sections 322 and 310. I accordingly direct that the accused be retried before the same or another president.

I would like to quote the observations of Mr. Justice Taylor in *Ahmad Shah bin Yassin* v *Public Prosecutor* (2) at page 29.

"While it is clearly the duty of those in charge of prosecutions to guard against misjoinder and other errors in charges, it is also the duty of presidents and magistrates to examine all charges critically before calling upon accused to plead and to rectify errors at the earliest opportunity."

The time to do this is at the same time when the accusation was made. *R.* v. *Tan Chu Chooi.* (3)

Noting the dates specified in the charge, it is clear that compliance with section 169(2) would necessitate the framing of three separate charges. In our Code, the joinder of the offences of the same kind to be tried at one trial is limited to three, committed within the space of twelve months while Singapore provides for any number of such offences to be tried together.

The conviction is set aside and retrial ordered.

Re-trial ordered.

SAINT ANDREW'S MISSION HOSPITAL v WAH HIN & CO. LTD. & ORS.

[A.C.J. (Kulasekaram J.) August 23, 1968]
[Singapore — District Court Appeal No. 1 of 1968]

Landlord and Tenant — Rent controlled premises — Statutory tenant — Notice to chief tenant — Existence of sub-tenants — Position of sub-tenants on termination of chief tenant's tenancy — Whether further notice required before proceedings can be commenced against sub-tenants — Control of Rent Ordinance (Cap. 242) ss. 17, 26, 27 & 28.

The appellant/plaintiff, landlord of a rent-controlled premises, let the premises to a tenant who in turn sublet a portion of it to a sub-tenant. The respondents